



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** LBM, Inc.

**File:** B-243505

**Date:** April 12, 1991

Kenneth L. Hardison, Esq., McLeod, McLeod & Hardison, for the protester.  
Behn Miller, Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Bidder's failure to complete solicitation's Certificate of Procurement Integrity renders its bid nonresponsive since completion of the certificate imposes material legal obligations upon the bidder to which it is not otherwise bound.

### DECISION

*E36101*  
*34*  
LBM, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62472-91-B-5537, issued by the Naval Air Engineering Center, Lakehurst, New Jersey, for family housing maintenance and repair. On December 12, 1990, the Navy issued amendment No. 0001 to the IFB, which incorporated the requirement for a Certificate of Procurement Integrity pursuant to Federal Acquisition Regulation (FAR) § 52.203-9. LBM states that it properly acknowledged receipt of the amendment, but concedes that it failed to complete the certification. Because its bid lacked a completed Certificate of Procurement Integrity, on January 18, at bid opening, the contracting officer rejected LBM's bid as nonresponsive; on April 1, after learning of its rejection, LBM filed the instant protest with our Office.

We dismiss the protest.

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Since the facts of this protest are identical to those in Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 91-1 CPD ¶ \_\_\_, we resolve the protest without obtaining an agency

*[ 1-6-91 N.Y. R. to C. B. P. H. by [unclear] ]*  
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05 report. See Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)).

As explained in Mid-East, the Certificate of Procurement Integrity imposes additional legal requirements upon the bidder materially different from those to which the bidder is otherwise bound, either by its offer or by law. In particular, the certification implements several provisions of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (West Supp. 1990); the OFPP Act provisions requiring this certification became effective, for the second time, on December 1, 1990. The activities prohibited by the OFPP Act involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information.

The procurement integrity certification requirements obligate a named individual--the officer or employee of the contractor responsible for the bid or offer--to become familiar with the prohibitions of the OFPP Act, and impose on the bidder, and its representative, a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify to the veracity of that disclosure. In addition, the signer of the certificate is required to collect similar certifications from all other individuals involved in the preparation of bids or offers; in this regard, the certifying individual attests that every individual involved in preparation of the bid or offer is familiar with the requirements of the OFPP Act. The certification provisions also prescribe specific contract remedies--including withholding of profits from payments and terminating errant contractors for default--not otherwise available. See Mid-East Contractors, Inc., B-242435, supra.

As a result of the substantial legal obligations imposed by the certification, omission from a bid of a signed Certificate of Procurement Integrity--whether from failing to acknowledge an amendment adding the certification, from acknowledging the amendment but failing to return the signed certification, or from improperly completing the certification in such a way as to call into question the bidder's commitment to the requirements--leaves unresolved a bidder's agreement to comply with a material amendment of the IFB. For these reasons, failure to complete the certificate itself is a material deficiency in a bid requiring that the bid be rejected as nonresponsive. See also FAR § 14.404-2(m).

Here, as in Mid-East, LBM failed to submit a completed procurement integrity certification with its bid; accordingly, since LBM's bid does not represent on its face an unequivocal

commitment to comply with the material obligations imposed by the certification, we find that its bid was properly rejected as nonresponsive by the Navy.

The protest is dismissed.

*Christine S. Melody*

Christine S. Melody  
Assistant General Counsel